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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 49

JOSÉ SORIANO, *Petitioner*,

v.

THE UNITED STATES, *Respondent*.

On Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the United States Court of Claims is based upon its opinion in *Elenterio Logronio* v. *The United States*, reported in 133 F. Supp. 395, which reversed its Opinion in *Victorio* v. *United States*, 106 F. Supp. 182, which in turn superseded its Opinion in *Victorio* v. *United States*, 91 F. Supp. 748.

The judgment of the United States Court of Claims was entered December 16, 1955 (R. 15). The Petition for Writ of Certiorari was filed on March 13, 1956, and granted April 30, 1956 (R. 16). The jurisdiction of this Court rests on 28 U.S.C. § 1255 (1) (App. F, p. 1 b).

STATUTES—PRESIDENTIAL MILITARY ORDERS AND PROCLAMATIONS—MILITARY ORDERS

The Statutes, the Presidential Military Orders and Proclamations, and the Military Orders involved, are set out in Appendices A to E of the Petition for Writ of Certiorari, pp. 1a to 25a, and in Appendices F to CC, *infra,* pp. 1 b to 83 b.

QUESTION PRESENTED

The basic question, as presented in the Petition for a Writ of Certiorari, is:

Do the facts, as disclosed by the Record, under the Constitution of the United States and the laws and decisions applicable, establish:

That the personnel of the Philippine Army, called and ordered into the service of the armed forces of the United States by Military Order of the President of the United States, as Commander-in-Chief of the Army and Navy of the United States, and subsequently by the Commanding Officer of the Army Forces of the United States in the Far East (Philippines), who answered the call, did not surrender, but fought as organized guerrillas, who were subsequently recognized by the President of the Philippines as authorized elements of the Philippine Army and by the Commander-in-Chief of the Army Forces of the United States, Southwest Pacific Area, as authorized elements

of the United States Armed Forces in the Far East, were part of the armed forces of the United States, so that the requisitions for their sustenance for military operations, for which the requisitioning officers agreed that the United States Army would pay, created a debt of the United States for which the United States is liable?

For purposes of the present brief, this basic question is subdivided, as follows:

1. Whether the Military Order of Franklin D. Roosevelt, as Commander-in-Chief of the Army and Navy of the United States, calling and ordering the Philippine Army into the service of the armed forces of the United States, and the implementing Military Orders of the Commander-in-Chief of the United States Army Forces in the Far East, had the effect of inducting the personnel of such Army into the armed forces of the United States.

2. Whether the requisitions for military operations of the organized guerrillas, the remnants of such Army, who refused to surrender after the fall of Corregidor and continued to fight Japan, which guerrillas swore allegiance to the United States before United States Army officers, and who were later recognized as authorized elements of the Philippine Army by President Osmena, and as authorized elements of the United States Armed Forces in the Far East by General MacArthur, Supreme Commander, Southwest Pacific Area, for which requisitions the requisitioning officers agreed the United States Army would pay, created a debt of the United States for which the United States is liable.

STATEMENT

The facts, fully set forth in the Petition for Writ of Certiorari, are, in substance, as follows (R. 1-10, except where noted):

(1) Petitioner is a citizen of the Republic of the Philippines, to which he owes allegiance, and was at the time the claim *accrued*. At the time this claim *arose*, he owed allegiance to the United States of America (R. 1).

(2) Pursuant to authority of the Philippine Independence Act of March 24, 1934 (48 Stat. 456) and Sec. 1(12) of the Ordinance appended to the Philippine Constitution, the Philippine Army was called and ordered into the service of the armed forces of the United States by Military Order of the Commander-in-Chief of the Army and Navy of the United States, President Franklin D. Roosevelt, 26 July 1941, and was integrated therein by general orders of General Douglas MacArthur, Commanding General of the United States Army Forces in the Far East, known in short as "USAFFE". (R. 2)

(3) Congress declared a state of war to exist between Japan and the United States on December 8, 1941. (App. J, p. 7 b)

(4) After the fall of Bataan and Corregidor and the surrender of the United States Armed Forces (App. S, p. 34 b) in 1942, personnel of USAFFE from the United States mainland and from the Philippines refused to surrender to the military forces of the Imperial Japanese Government, which Government was then the enemy of the United States of America (hereinafter sometimes referred to as the Enemy). Instead, they fled to the hills, where they banded and

organized themselves into guerrilla units and continued to wage military operations against the Enemy, in accordance with the express and implied authority of General MacArthur, Commander-in-Chief, USAFFE, and later Supreme Commander, Southwest Pacific Area (USA-SPA), having sworn allegiance to the United States of America, until the liberation of the Philippines from the military control of the Enemy by the armed forces of the United States. (R. 2)

(5) Among the guerrilla units thus organized was the 1st Bn., 76th Infantry Regiment, 72nd Division, 7th Military District, in the Island of Negros, Philippines, which unit continuously conducted military operations against the Enemy in accordance with the express and implied authority of General MacArthur, its leader having sworn allegiance to the United States of America and the men having in turn been so sworn. (R. 2)

(6) In order successfully to prosecute military operations against the Enemy and in accordance with the Rules of Land Warfare published by the United States War Department and or in accordance with the express and implied authority of General MacArthur and his staff, the aforesaid guerrilla unit, through its authorized officers, requisitioned, commandeered, and otherwise legally procured foodstuff and food supplies, equipment, goods, and merchandise from various persons. (R. 2-3)

(7) Petitioner, at various times from 1942 to 1945, delivered to the aforesaid guerrilla unit, through its authorized officers, various quantities and descriptions of foodstuff and food supplies, equipment, goods, and merchandise, needed by this armed force, the then

reasonable market value of which equaled or exceeded the total amount of Two Hundred Thirty-nine Thousand Five Hundred Thirty-one Pesos and Fifty Centavos (₱239,531.50), currency of the Republic of the Philippines, or One Hundred Nineteen Thousand Seven Hundred Sixty-five Dollars and Seventy-five Cents ($119,765.75), United States currency. (R. 3)

(8) At the time the various foodstuffs and food supplies, equipment, goods, and merchandise were commandeered, corresponding receipts were issued to petitioner, and it was clearly understood and agreed at the time of such commandeering that a legal obligation to pay was created thereby and that payment would eventually be made by the United States Army. (R. 3-4)

(9) Upon the return of President Osmena and General MacArthur to the Philippines, the members of the 1st Bn., 76th Infantry Regiment, 72nd Division, 7th Military District, were recognized by President Osmena as an authorized element of the Philippine Army and by General MacArthur as an authorized element of the United States Armed Forces in the Far East. (App. X, p. 59 b, and App. Y, p. 61 b)

(10) Japan surrendered the Philippine Islands September 2, 1945. (App. J, p. 7 b)

(11) Petitioner has not been paid for the above-mentioned foodstuffs and food supplies, equipment, goods, and merchandise, and is justly entitled to the sum of One Hundred Nineteen Thousand Seven Hundred Sixty-five Dollars and Seventy-five Cents ($119,765.75). (R. 4)

(12) Petitioner filed a claim for payment of the commandeered property with the Claims Service of

the United States Army on March 30, 1948, which was within the period prescribed for filing claims against the United States Army. This claim was denied on June 21, 1948. (R. 4)

(13) Petitioner filed a petition in the United States Court of Claims on April 26, 1951, which was within six years of the date on which Japan surrendered and within six years of the date on which the claim was denied by the Army Claims Service. (R. 1)

(14) The United States Court of Claims, upon Defendant's Motion for Judgment on the Pleadings, on the basis of its prior decision in *Eleuterio Logronio* v. *United States*, *supra*, dismissed the petition on December 16, 1955. (R. 15)

(15) The claim in the *Logronio* case was barred in whole by the statute of limitations and, in addition, was barred in part by the finality provisions of the Missing Persons Act, which the Government had argued—"But instead of deciding this simple case on those simple grounds, the case is made the vehicle for overruling our former decision in the case of *Isidro Victorio* v. *United States*, 122 C. Cls. 708 (106 F. Supp. 182). That decision was arrived at unanimously, after normal deliberation. We have not been asked to overrule it. I think that decision was right and I cannot concur in the part of the instant opinion which overrules it." (Dissent of Judge Madden, concurring in the result.) (Brief for United States in Opposition, p. 39.)

(16) This Court granted certiorari. (R. 16).

SUMMARY OF ARGUMENT

I.

The recognized guerrillas were part of the armed forces of the United States

Under the Philippine Independence Act of 1934 and the Constitution of the Commonwealth of the Philippines, the President of the United States, as Commander-in-Chief of the Army and Navy of the United States, had the sovereign right and power to maintain armed forces of the United States in the Philippines and to induct all organized armed forces in the Philippines into such armed forces of the United States, i.e., to call and order such Philippine forces into the armed forces of the United States.

Under date of July 26, 1941, President Roosevelt, as Commander-in-Chief of the Army and Navy of the United States, issued a Military Order calling and ordering all Philippine organized armed forces into the service of the armed forces of the United States, to be under the command of a general officer of the United States Army.

On the same date the War Department created a Far East command, called United States Army Forces in the Far East, known as USAFFE, and named General MacArthur its commander.

In October, 1941, the Philippine Constabulary, and in December, 1941, the Philippine Army, were inducted into the Armed Forces of the United States in the Far East by order of its Commander-in-Chief, General MacArthur.

The official History of the Department of the Army, *The War in the Pacific,* Vols. III, IV, and V, and the

Report of the High Commissioner of the Philippine Islands, for the period July 1, 1941, to June 30, 1942, clearly show that the Philippine Army was part of the armed forces of the United States from 1941 until the surrender by General Wainwright in 1942.

After the fall of Corregidor, guerrilla bands were organized under the express orders of General MacArthur, then Supreme Commander of the Pacific Area, to carry on, and they continued to carry on, military operations against Japan.

Upon his return in 1944, President Osmena recognized the organized guerrillas as authorized elements of the Philippine Army.

Thereupon, the guerrillas so recognized were recognized by order of General MacArthur as authorized elements of USAFFE.

On June 30, 1946, the Commander-in-Chief of the Army and Navy of the United States released from the service of the armed forces of the United States the organized Philippine armed forces which had been ordered into the service of the armed forces of the United States in 1941.

Thus, the recognized guerrillas were part of the armed forces of the United States, from 1942 to 1945 or 1946, just as the Philippine Army had been in 1941 and 1942.

The decisions in the Filipino naturalization cases following World War II recognize the fact that the recognized guerrillas were part of the armed forces of the United States.

The statutes support the fact that being in the service of the armed forces of the United States is the same as being in the armed forces of the United States.

The reasoning of the Court below to the contrary is without foundation.

II.

The recognized guerrillas had the right and power to requisition their military needs and thereby to create a debt of the United States therefor

The Hague Conventions, the Rules of Land Warfare, and authorities on International Law, unqualifiedly permit the making of requisitions to carry on military operations — with the corresponding obligation to make just compensation therefor. The Military Requisition Act of 1941 was an approval of the existing power and right of requisition.

The organized, recognized guerrillas had this power and right notwithstanding the Autonomy Act of 1916.

Decisions of the Appeal Board, Office of Contract Settlement, apply the Contract Settlement Act of 1944 to the Philippines, though they are not mentioned in the Act.

Applicable decisions of the Courts support the right of petitioner to just compensation on account of the requisitions of the organized, recognized guerrillas.

ARGUMENT

I. THE RECOGNIZED GUERRILLAS WERE PART OF THE ARMED FORCES OF THE UNITED STATES.

The claim is based upon contracts between petitioner and the United States armed forces in the Philippines, arising out of requisitions necessary for the maintenance of those armed forces in military operations against Japan in 1942 to 1945, entered into under emergency conditions.

Admitting *arguendo* that the Philippine Army, which was called into the service of the armed forces of the United States by the Commander-in-Chief of the Army and Navy of the United States, President Roosevelt, and by the Commander-in-Chief of the United States Army Forces in the Far East, General Douglas MacArthur, is not within the definition of *Army* of the United States, as found in 10 U.S.C. 2 (App. A, Pet. for Writ, p. 1a), it was nonetheless part of the *armed forces* of the United States in the Far East in World War II.

The Navy, the Marine Corps, the WAVES, and the WACs, were not part of the Army of the United States, as defined in the Code in 1916, but they were definitely a part of the *armed forces* of the United States in the Far East in World War II. So was the Philippine Army.

On March 24, 1934, the Philippine Independence Act was approved (48 Stat. 456—App. to Pet. for Writ, pp. 2a-3a). One of its "*Mandatory* Provisions" (Sec. 2(a)(12)) was:

> "*The Philippine Islands recognizes the right of the United States . . . to maintain* military and other reservations and *armed forces in the Philippines,* and, *upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.*" (Italics supplied.)

It also required that all Filipinos would owe allegiance to the United States and thus they could be drafted or inducted into the Armed Forces of the United States.

The Constitution of the Philippine Commonwealth, adopted February 8, 1935, in furtherance of the Independence Act, provided that its President would be Commander-in-Chief of all armed forces of the Philippines, replacing our Governor General; but, in Section 1 of the Ordinance appended thereto, it was provided that—

> ". . . pending the final and complete withdrawal of the sovereignty of the United States over the Philippines [July 4, 1946] . . ."
>
> * * * * *
>
> "(12) The Philippines recognizes the right of the United States . . . *to maintain* . . . *armed forces* in the Philippines, and, upon order of the President, *to call into the service of such armed forces* all military forces organized by the Government of the Commonwealth of the Philippines." (Italics supplied.) (App. Q, p. 20 b.)

Thus, prior to and on the outbreak of the war between the United States and Japan, the United States had the *sovereign right* to maintain an armed force in the Philippines and to have the President of the United States call and order the organized Philippine Army into that armed force.

In 1935, there existed a Philippine militia, under an Act of March 17, 1917—a small Philippine Army. On December 21, 1935, the First National Assembly passed Commonwealth Act No. 1, in accordance with a plan devised by General MacArthur (App. P, p. 15 b, and App. S, p. 25 b), which, among other things, provided for the national defense of the Philippines. The purpose was to build a Philippine Army, which was to be called the "Philippine Department." (App. P, p. 16 b.)

There being no one qualified in the Philippines to train the newly created Philippine Department,

General MacArthur resigned from the United States Army and was named Military Advisor to the Commonwealth Government to build the Philippine Department, in accordance with his plan, Commonwealth Act No. 1. He acted in this capacity until 1941. (App. S, p. 26 b.)

In June 1941 General MacArthur wrote the War Department suggesting that "*since the Philippine Army was to be absorbed by the U. S. Army* in the very near future," he intended to close the office of Military Advisor and suggested a new military command embracing all activities in the Far East, he to be named commander. (Italics supplied.) (App. S, p. 26 b, and App. T, p. 53 b.)

On July 17, 1941, General Gerow recommended:

"1. That the President, by executive order, *call into the service of the United States* for the period of the emergency all organized military forces of the Commonwealth. [Italics supplied.]

"2. That General MacArthur be called to active duty in the grade of Major General and assigned as commander of *Army* Forces in the Far East. [Italics supplied.]

"3. That $10,000,000 of the President's Emergency Fund be allotted to cover the costs of mobilization and training of the Philippine Army for a period of three months.

"4. That the training program of the Philippine Army for an additional six to nine months be financed from the sugar excise fund, or from other funds appropriated for this purpose.

"5. That 425 Reserve officers be sent to the Philippines to assist in the mobilization and training of the Philippine Army." (App. S, p. 27 b.)

On July 25, 1941, Secretary of War Stimson recommended this program to the President. (App. S, p. 28 b.)

On July 26, 1941, President Roosevelt issued the Military Order mentioned *supra,* p. 4.

While no commanding officer was named in the Order, it was clear that the forces in the Philippines were to be under a general officer of the United States Army. "*The actual induction of the Philippine Army Units* was to be accomplished by orders issued by that general officer." (Italics supplied.) (App. S, p. 28 b.)

The same day, a new command was created called United States Army Forces in the Far East (USAFFE), consisting of the Philippine Department, those military forces of the Commonwealth ordered into active service for the period of the emergency, and such other forces as might be assigned. (App. T, p. 53 b.) At the same time, MacArthur was recalled to active duty, effective on 26 July, with the rank of major general, designated as the general officer referred to in the military order, and put in command of U. S. Army Forces in the Far East. (App. T, p. 53 b.)

On October 6, 1941, General MacArthur ordered a unit of the Philippine Constabulary into the service of the armed forces of the United States. (App. U, p. 55 b.)

On December 18, 1941, General Orders No. 46 was issued, reading in major part as follows:

> "1. Pursuant to provisions of the Proclamation of the President of the United States, dated July 26, 1941, *all personnel of the Philippine Army* on active duty and all active units of the

Philippine Army, *less personnel and units already accepted for service with the United States Army Forces,* are hereby called into the service of the *armed forces* of the United States in the Philippines, effective on the date of acceptance for the period of the existing emergency, and will be accepted for such service by officers in the service of the United States *Army Forces* in the Philippines. [Italics supplied.]

"2. Personnel of the Philippine Army which may hereafter be called to active duty and units thereof which may hereafter be activated are hereby called into the service of the *armed forces* of the United States in the Philippines, effective on the date of acceptance, and will be accepted for such service by officers in the service of the *United States Army Force in the Philippines.*" (Italics supplied.) (App. C to Petition for Writ, p. 17a.)

In the report of the United States High Commissioner to the Philippines, for the period July 1, 1941, to June 30, 1942 (App. P, pp. 15 b to 20 b), he says:

* * * * *

"On July 26, 1941, the President of the United States ordered the *incorporation of the Philippine armed forces into the United States Army* and on the same day appointed Gen. Douglas MacArthur, formerly Chief of Staff of the United States Army, then military adviser to the Commonwealth Government, to be commander in chief of a new organization to be known as the United States Army Forces in the Far East . . . *At the same time he pushed forward the work of inducting Philippine Army troops into the service of the United States Army,* and giving them intensive training under regular United States Army officers. *By the time war broke out the bulk of Philippine reservists had been so inducted;* and

many of these, together with the Philippine Scout troops, played a heroic part in the later defense of Bataan and Corregidor. [Italics supplied.] [App. P, p. 16 b.]

* * * * *

"The calling into the service of the armed forces of the Commonwealth government military forces necessitated the assumption by the United States of expenses previously borne by the Commonwealth. At the same time, the expenses of our military establishment in the Philippines were being augmented by the increased number of American troops in the islands. To finance the calling of Philippine troops into the service of the United States armed forces and to maintain them until regular appropriations had been made, the President of the United States advanced $15,000,000 from his emergency fund. In December 1941 Congress appropriated $269,000,000 'for all expenses necessary for the mobilization, operation, and maintenance of the Army of the Philippines, including expenses connected with calling *into the service of the armed forces of the United States* the organized military forces of the Government of the Commonwealth of the Philippines . . .' . . of which not to exceed $15,000,000 may be restored to the Emergency Fund for the President . . . in reimbursement of a like amount advanced therefrom . . .' " (App. P, p. 19 b.)

The expenses were to be borne by the United States at first, under the MacArthur training plan, by the proceeds of the sugar excise tax and the devaluation fund. In 1941, these funds were obviously insufficient in amount, and a Presidential advance and Congressional appropriations were required. (App. P, p. 19 b, and App. T, p. 53 b.)

Thus, contemporaneous documents — the clear language of the Philippine Independence Act, the Con-

stitution of the Commonwealth of the Philippines, the Orders of President Roosevelt, as Commander-in-Chief of the Army and Navy of the United States, and of General MacArthur as Commander-in-Chief of the United States Army Forces in the Far East, the Report of the High Commissioner to the Philippines in 1943, all corroborated by the History published under the auspices of the Department of the Army in 1953-1954—lead to the irresistible and undeniable conclusion that the Philippine Army was inducted or ordered into the United States Armed Forces in the Far East, and became a part of the Army Forces of the United States. This evidence confirms the assertions of General Carlos P. Romulo to this effect, in his letter of February 15, 1956 (App. D to Pet. for Writ, pp. 18a to 21a).

The Filipinos thereafter fought side by side with other American soldiers from the United States mainland, under United States Army officers, as well as their own—at Bataan, at Corregidor, on the Island of Negros, involved in this case, and on the many other islands of the 7,000 islands which comprise the Philippines.

On April 9, 1942, General Edward P. King, Jr., surrendered 78,000 men at Bataan. (App. S, p. 33 b.)

On May 6, 1942, General Wainwright, who had been made Commander-in-Chief, United States Forces in the Philippines (USFIP), by President Roosevelt, but not by General MacArthur, surrendered the remnants of our army, 11,000 men, at Corregidor. Japanese General Homma refused to accept such surrender unless Wainwright surrendered all of the United States armed forces in the Philippines. (App. S, p. 34 b, and App. V, p. 55 b.)

Wainwright feared the annihilation of the 11,000 defenseless men on Corregidor if he failed to surrender all troops. On the other hand—"MacArthur, he knew, expected [General William F.] Sharp's force to continue the fight as guerrillas and to keep alive resistance on Mindanao. He [Wainwright] had done his best to achieve this aim, and Sharp was now free to conduct *guerrilla* operations." (Italics supplied.) (App. S, p. 34 b-35 b.)

Faced with the dilemma, General Wainwright was forced to order the surrender of officers on Mindanao and other islands, as well as Corregidor (App. S, p. 35 b, App. V, p. 55 b), although his command had a month earlier been restricted by General MacArthur to Corregidor (General Homma refused to believe it). On May 7, 1942, Wainwright ordered Sharp to surrender. Sharp addressed a cable to General MacArthur, who replied on May 7:

> "Orders emanating from Gen. Wainwright have no validity. If possible separate your force into small elements and initiate *guerrilla* operations." (Italics supplied.) (App. S, p. 38 b.)

> "Only a small portion of the troops surrendered. The rest remained in hiding, to become later the nucleus of one of the *guerrilla* forces in Northern Luzon." (Italics supplied.) (App. S, p. 37 b.)

The bulk of Colonel Nakar's forces remained in the mountains, and those who evaded the Japanese were organized into the 14th Infantry (PA), which continued in existence as a *guerrilla* force. (App. S, p. 37 b.)

On Leyte, of his 2,500 officers and men, Colonel Cornell surrendered 11 American army officers, 40

Filipino army officers, and 20 Filipino enlisted men. The rest had disappeared to carry on *guerrilla* operations. (App. S, p. 39 b.)

On Negros, the island involved in the subject case, the troops refused to surrender and took to the hills. Colonel Hilsman, upon the urgency of General Wainwright, finally persuaded 95% of one battalion and 30% of two others to come down out of the hills. Two battalions never surrendered at all. (App. S, p. 40 b.)

Thus were formed some of the various *guerrilla* units—known as *organized guerrillas*, under the *direct orders* of General MacArthur, then (Commander-in-Chief) Supreme Commander, Southwest Pacific Area, and the various American army officers on his staff and under his command—all part of USAFFE. There were many others similarly organized. (App. S, p. 39 b, and App. Y, pp. 61 b-68 b.)

On June 9, 1942, General Wainwright surrendered all United States armed forces in the Philippines including the Filipinos — that is, except the organized guerrillas. (App. S, p. 40 b.)

The guerrillas continued the fight, harassed the Japs, communicated continuously with General MacArthur, and prepared for the return of their President and of General MacArthur.

In October 1944, President Osmena, who was President of the Commonwealth of the Philippines and Commander-in-Chief of its Army, by virtue of an Act of the Congress of the United States—1943—(App. K, p. 8 b), notwithstanding the Philippine Constitution (App. Q, p. 20 b), returned and issued Order No. 21, in which he recognized retroactively certain

named organized guerrilla units as authorized elements of the Philippine Army, they having been inducted into the United States armed forces as such. (App. X, p. 59 b.)

General Krueger, Commander of the Sixth Army, and General MacArthur, Supreme Commander (or Commander-in-Chief), Southwest Pacific Area, followed this Order of President Osmena by Miscellaneous Orders, in which they also retroactively recognized by name, as authorized elements of USAFFE, the guerrilla units recognized as authorized elements of the Philippine Army. (App. Y, p. 61 b.)

On June 30, 1946, President Truman, as Commander-in-Chief of the Army and Navy of the United States, released from the service of the armed forces of the United States all of the organized forces of the Government of the Commonwealth of the Philippines which had been called and ordered into the service of the armed forces of the United States pursuant to the Military Order of July 26, 1941. (App. B to Petition for Writ, p. 16a.)

Thus, we also have, by an indisputable record, the established facts that:

(1) After the fall of Corregidor, guerrilla bands were organized under the express and implied authority of General MacArthur and his staff to continue the military operations;

(2) Upon the return to the Philippines of President Osmena, Commander-in-Chief of the Philippine Army, the organized guerrilla units were recognized retroactively by him as authorized elements of the Philippine Army from the various dates of their organization in 1942;

(3) Upon the return to the Philippines of General MacArthur, the organized guerrilla units so recognized by President Osmena were recognized retroactively by General Krueger and General MacArthur as authorized elements of the United States Armed Forces in the Far East, from the various dates of their organization in 1942; and

(4) The period of induction of the Philippine Army was terminated June 30, 1946, by President Truman, as Commander-in-Chief of the Army and Navy of the United States.

Thus, the organized, recognized guerrillas were part of the armed forces of the United States from 1942 to 1946.

That the organized guerrillas were part of the United States armed forces was recognized by the District Court for the Northern District of California (S.D.) in the *Petition of Agustin,* 62, F. Supp. 832.

In that case, Agustin, a Filipino guerrilla, sought to become a citizen of the United States by a short-cut method provided for a person "*who has served . . . honorably in the military . . . forces of the United States* during the present war and who, having been lawfully admitted to the United States, including its Territories or Possessions, shall have been at the time of his enlistment or induction a resident thereof . . ." (Italics supplied.) (50 App. U.S.C.A., Sec. 640.)

The Court noted the various emergency decrees and specifically the fact that the Yay Regiment of guerrillas, in 1945, had been recognized as an authorized element of the United States Armed Forces in the Far East, and held that Agustin, though he had

neither enlisted nor been inducted, had been in our Army and was entitled to the benefits of the statute.

The Court said, at page 835:

"I stated in the Petition of Delgado, D.C., 57 F. Supp. 460, at page 462—

'It was clearly the intent of Congress in adopting Sec. 701 to follow the historic course of granting the boon of citizenship to loyal aliens engaging to help defend this country. The House Committee reporting H. R. 1710 (which became Sec. 701) said: "It is a matter of historic record that the Government of the United States, as an encouragement to loyal aliens engaged in the defense of this country through service in the armed forces, has in past years, relieved them from some of the burdensome requirements of the general naturalization laws." House Misc. Rep. 10661, page 3. And again in the same report, it is stated: "This proposed legislation proceeds upon the principle that non-citizens who are ready and willing to sacrifice their lives in the maintenance of this democratic government are deserving of the high gift of United States citizenship when vouched for by responsible witnesses as loyal and of good character and shown by government records as serving honorably."'

"Certainly petitioner here was within the category of those 'who are ready and willing to sacrifice their lives in the maintenance of this democratic government . . .' The broad and liberal concept, upon which Congress based the bestowal of citizenship upon aliens defending this country, must therefore, in my opinion, be the background against which the court should appraise the nature of petitioner's military activities in determining the question as to whether he served in the military forces of the United

States. Extreme technical distinctions should not be invoked to defeat the application for citizenship of a worthy and distinguished Filipino as against a fair and liberal interpretation of Congressional intent."

Had the Court based its decision on the fact that later Agustin had been a colonel in the United States Army, there would have been no occasion to discuss the guerrilla operations.

The Circuit Court of Appeals for the First Circuit, in *United States* v. *Peter You Lo Chen*, 170 F. (2d) 307, in refusing to permit the applicant therein the short-cut route to citizenship followed in the *Agustin* case, had occasion to consider the decisions in the *Appeal of Delgado*, 57 F. Supp. 460, and the *Appeal of Agustin, supra*, which had been cited as authority, and said, at page 310:

> "In the Agustin case, supra, the applicant for naturalization was a Filipino who had organized a guerrilla unit during the war against Japan. The oath of allegiance had been administered to him in 1942 by an American army officer who had taken refuge in his camp. Later his guerrilla unit was formally recognized by the Commander in Chief, Southwest Pacific area, as an authorized element of the United States Army Forces in the Far East, in an order issued from the headquarters of the Sixth Army on May 16, 1945. The guerrilla unit, which became known as the 'Yay Regiment', under command of Agustin with the rank of Colonel of Infantry, *was attached to* the 43d Division, U. S. Army, and Agustin was paid the salary and allowances of a colonel of the U. S. Army. [Italics supplied.] He rendered valiant combatant service, so much so that he was awarded the Distinguished Service Cross. The

court properly held that the informality of the circumstances of Agustin's enlistment did not obscure the actual fact of his honorable and distinguished service as commanding officer of a recognized element of the United States Army, and that petitioner was entitled to be admitted to citizenship. His petition was not opposed by the Naturalization Service."

It is to be noted that the special statute applies only to those who *served in the armed forces of the United States.* Agustin—a guerrilla—did. Chen, who had offered to serve, did not serve. Both Courts relied upon the guerrilla activities of the Yay regiment and its recognition as part of USAFFE.

If the guerrillas *served in* the United States Army for fighting purposes, they *served in it* for eating purposes, too; and if they *served in* the United States Army for naturalization purposes, they *served in* it for purposes of the payment by the United States of the debts contracted for the food and equipment required in their military operations.

The Government, in the many cases briefed and argued in the Court of Claims, has stressed the use of the word "service", in the Military Order of President Roosevelt, *supra,* concluding that calling the Philippine Army *into the service* of the United States armed forces is different from being made a part of the Army of the United States. It is urged that this conclusion is incorrect and that the Court could have readily, and should have, reached the contrary conclusion in the *Logronio* case, upon a full examination of the word, "service". The fact is that miscellaneous statutes speak of persons who *served in the armed forces,* meaning, primarily, persons who enlisted or

were inducted into the armed forces of the United States, but not necessarily limited thereto, as the *Agustin* case shows. But how does such induction in fact differ from being *ordered into the service* of the *armed forces* of the United States?

The word, "service", according to Webster's New International Dictionary (Second Edition) — Unabridged—1946, among other uses, means:

* * * * *

"Performance of official duties for a sovereign or state . . ."

* * * * *

"(a) Military or naval duty; also, its performance, esp. in war; as, *service* in the field; active *service*. (b) A particular military or naval operation, as a campaign, expedition, or engagement. (c) The military, naval, or other combatant organizations of a country; as, to have been in the *service;* in British use, esp. the naval organization.".

* * * * *

"Mil. A branch of any army whose chief duty is to supply the needs of a strictly combatant branch . . . In the United States Army, the services are: Adjutant General's Department, Inspector General's Department, Judge Advocate General's Department, Quartermaster Corps, Finance Department, Medical Department, Ordnance Department, Chemical Warfare Service, and Chaplains."

* * * * *

The word "serve" is:

* * * * *

"To do military, naval, or similar service; as, to *serve* in the wars or at sea; to *serve* in the army, navy or militia."

* * * * *

"To render military or naval service to; *to fight for.*" (Italics supplied.)

* * * * *

It is very clear that, when the organized units of the Philippine Army were ordered and called *into the service of the armed forces of the United States,* they were ordered and called to duty—to serve as part of our armed forces, to fight for the United States. The organized guerrillas were later incorporated into USAFFE, as of the date of their initial organization, and were as much a part of the armed forces of the United States as was any volunteer or draftee from the mainland.

The statutes amply support this fact.

The Selective Training and Service Act, 54 Stat. 885, Tit. 50, App. U.S.C.A. Sec. 303, provided that ". . . every other male citizen of the United States, who is between the ages of eighteen and forty-five at the time fixed for his registration, shall be liable for training and *service in the land or naval forces of the United States.*" (Italics supplied.)

The Soldiers' and Sailors' Civil Relief Act of 1940, 54 Stat. 1178, Tit. 50, App. 510, provided for the temporary suspension of legal proceedings and transactions which may prejudice the civil rights of persons in such service (*in the military service*) during the period over which the Act remains in force. Under Sec. 512, the Act applies to the United States, the several States and Territories, the District of Columbia, and all territory subject to the jurisdiction of the United States, "*including the Philippine Islands while under the sovereignty of the United States* . . ." (Italics supplied.)

The Second War Powers Act, 1942, 56 Stat. 176, 50 App. USCA Sec. 640, provides a speedy means of becoming a naturalized American for a person "who *has served* or *hereafter serves* honorably in the *military or naval forces* of the United States during the present war . . . " (*Supra*, p. 21.)

The reasons why the President of the United States and General MacArthur, prior to "Pearl Harbor", called all active units of the Philippine Army *into the service of the armed forces of the United States*, instead of inducting each individual into it, are probably many. One reason is clear.

The War Department for years had had the supervision of the Philippines. Any requests for their benefit, or any demands of them, were under that Department, whether the action called for was one for the executive or the legislative branch of our Government. The War Department had trained and supervised its Army, its Philippine Scouts, and its Constabulary. General MacArthur had been its Military Advisor. The Philippine Independence Act of 1934 and the Philippine Constitution contemplated the use of all organized Philippine forces trained by United States Army officers. The President of the United States was Commander-in-Chief of our Army and Navy and had the *sovereign right* to induct the Philippine Army into our armed forces, which he did, as their services were required to defend that outpost of the United States.

When Congress (or the President) has meant to cover persons *with the armed forces*, as distinguished from those *in the service of the armed forces*, it has done so. (See Tit. 10, USCA Sec. 1473, making camp-

followers subject to military law.) None of the pertinent statutes or Orders employ the word "with".

The Attorney General, in 1942, ruled that the Philippine Army, ordered into the armed forces of the United States, was "in active service in the land and naval forces of the United States". (40 Op. Atty. Gen. 185, App. B, p. 78 b.)

The organized, recognized guerrillas were equally *in the service* of the *armed forces* of the United States. They were as much a part of the armed forces of the United States as were the Marines.

The Court below reached the contrary erroneous conclusion (1) by trying to distinguish the effect of the Military Order of President Woodrow Wilson under an Act of January 26, 1918 (App. A to Petition for Writ, p. 1a), from the Military Order of President Roosevelt under the Philippine Independence Act of 1934; and (2) by reference to the separate Congressional appropriations to pay for having the Philippine Army in our armed forces.

The Court's reasoning is so thoroughly disposed of in the dissent of Judge Madden in the *Logronio* case, (App., Brief in Opposition to Petition for Writ, pp. 40 to 46), incorporated herein by reference, that very little comment is required.

A mere scrutiny of the legislative history of the Act of January 26, 1918 (App. O, p. 13 b) will show that its purpose was exactly the same as the corresponding provision of the Philippine Independence Act of 1934, and that they were both used in the same general way, considering the differences in the organized armed forces in the Philippines in 1918 and in 1941. The Committee Report says:

"The object of the bill is to enable the President *to call into the service* and place under Federal control such military organizations as may be formed in the Philippine Islands pursuant to local legislation . . . The people desire to show their loyalty to the United States and their gratitude to the United States *by service rather than by word . . . This legislation is to enable the President to call such troops into the service of the United States and to use them* wherever it may be necessary or advisable." (Italics supplied.)

The Philippine Independence Act and the Ordinance appended to the Constitution of the Commonwealth of the Philippines have this very purpose and very end in virtually the same language.

The matter of appropriations need delay us little. Congress had the power and right to include the Philippine Army in a general appropriation for the War Department, or separately—by reason of a different scale of pay, which has always existed, or because it desired to treat the Philippine Army as a separate department, or for no reason at all. It was as natural to have a separate appropriation for the Philippine Army, as distinguished from the United States Army, as it was to have a separate appropriation for the Navy. The Philippine Army was still part of the armed forces of the United States, notwithstanding its having been treated separately for purposes of appropriations, as was the Navy.

From the passage of the Jones-Costigan Sugar Act of 1934 (48 Stat. 670) and the Sugar Act of 1937 (50 Stat. 915, App. L, p. 9 b) as amended, under which a processing tax was collected on the domestic processing of all sugar, the amount collected from the

processing of Philippine sugar had been returned to the Commonwealth of the Philippines. (App. L, p. 9 b.) The tax from the processing of sugar coming from Cuba, Hawaii, and Puerto Rico was retained. This fund from Philippine sugar had been used to finance the Philippines, and its continued use was contemplated in the MacArthur plan for the Philippine Department and the induction thereof into the armed forces of the United States. (App. T, p. 53 b.) This fund was insufficient, by reason of the larger armed forces in the Philippines which *we needed* in 1941. Obviously, the Philippines could not be, and were not, expected to pay this bill. So President Roosevelt first used his emergency fund and then Congress appropriated as it saw fit.

Nothing in the appropriations—in the funds from which payments were to be made—changes the character of the induction of the Philippine Army as an organized force into the United States armed forces.

The case of *United States* v. *R. P. Andrews & Company*, 207 U.S. 229, one of the first cases following the Spanish-American War, involving a contract for the benefit of the Philippine Islands, is distinctly in point.

From July, 1901, the Executive authority as to civil affairs in the Philippines was transferred to the President of the Philippine Commission, his authority being exercised under instructions from the President of the United States, subject to the direction and control of the Secretary of War. A Bureau of Insular Affairs in the War Department was given general charge of departmental business concerning the Philippine Islands. In May, 1901, the President of the

Philippine Commission had telegraphed the Secretary of War, stating the necessity for a government printing office at Manila. The Secretary of War then directed the Bureau of Insular Affairs of the War Department to purchase the necessary equipment and supplies to establish a printing office.

Pursuant thereto, the Bureau of Insular Affairs, in August, 1901, negotiated with R. P. Andrews & Company for a shipment of paper. The negotiations were carried on as though the Secretary of War were making the purchase. It was not intimated that the Bureau of Insular Affairs was acting as agent for the Philippine Islands instead of the Secretary of War. It was known that the paper was intended for use in the Philippine Islands, and the letter contained a statement that the price would be "paid from Philippine funds". The Court said, at page 239:

> "The statement of the fund from which the payment was to be made, instead of justifying the inference that the contract was intended to be made in the name of the Government of the Philippine Islands, through its agent, gives countenance to a contrary inference. (That the Bureau was not acting as agent for the Philippine Islands but as agent of the Secretary of War representing the United States.) This follows, because, if the Government of the Philippine Islands was the contracting party, its funds would, as a matter of course, be the source from which the payment was to be made. The reference, therefore, to the fund from which the payment was to be made, but served to indicate that the United States, in making the contract, contemplated that the purchase price would be discharged by it from the Philippine funds under its control."

The goods had been shipped to the carrier designated by the Secretary of War and the bills of lading had been accepted. While the contract had not been reduced to writing, signed by the contracting parties, as required by Rev. Stat. Sec. 3744, the Court held that non-compliance with that section is immaterial after the contract has been performed.

The Government was held liable upon this informal express contract.

There, as here, an informal contract was entered into. There, as here, the contract was made by an officer of the United States. There, as here, provision was later made to pay out of Philippine funds, under the control of the War Department (General MacArthur). Notwithstanding, this Court held the United States liable upon the contract.

The appropriation, "Expenses, Army of the Philippines" was enacted originally on December 17, 1941, 55 Stat. 813.

On January 3, 1942, President Roosevelt proclaimed Executive Order 9011 (7 Fed. Reg. 145) (App. B, Pet. for Writ, p. 11a), which provided, among other things, that necessary expenditures from funds in the Philippine Treasury for purposes authorized by the Act of December 17, 1941, would be made by disbursing officers of the Army of the Philippines *"on the approval or authority of the Commanding General, United States Army Forces in the Far East (General MacArthur), and for such purposes as he may deem proper, and his determination thereon shall be final and conclusive upon the accounting officers of the Philippine Government, . . ."* (Italics supplied.)

Clearly then, the Commanding General of the United States Army was the final authority for the expenditure of funds appropriated by Congress to run the Philippine Department, a part of the Armed Forces of the United States in the Far East.

Finally, there is nothing whatsoever in the applicable laws or orders justifying the Court's conclusion and the respondent's continued assertions that the Filipinos were "serving with" the United States Army (Brief in Opposition, pp. 7, 9, 10) rather than *serving in* the United States armed forces.

In summary, the Philippine Army was ordered or inducted into the armed forces of the United States in 1941 and served therein until the surrender in 1942; the guerrillas were organized in 1942, and thereafter fought under the express plans and orders of General MacArthur, their Commander-in-Chief; and the organized guerrillas were retroactively recognized as part of the United States Armed Forces in the Far East for the period 1942 to at least 1945, when Japan surrendered. The term of service of those still in the armed forces of the United States after 1945 terminated June 30, 1946—four days before the Philippines achieved their independence.

II. THE RECOGNIZED GUERRILLAS HAD THE RIGHT AND POWER TO REQUISITION THEIR MILITARY NEEDS AND TO THEREBY CREATE A DEBT OF THE UNITED STATES THEREFOR

Insofar as claims which involve the procurement in the Philippine Islands of supplies and material urgently needed for our armed forces conducting military operations in the Islands are concerned, it is universally recognized that such supplies and material

may be taken at any time, without Congressional or Executive authority, as needed by our armed forces. Such taking, however, it is further universally recognized, entitles the owner to the payment of just compensation, where payment therefor was not made at the time of taking.

This right and the obligation are expressed in the Hague Convention (IV) of 1907, respecting the laws and customs of war on land. Article LII of the 1907 Convention is substantially word for word the same as Article LII of the 1899 Convention, with the exception of the last phrase. (2 Treaties, etc., Malloy, 1910, 2056, 2289; 36 Stat. 2277, 2308.)

Article LII of the 1907 Convention reads, as follows:

> "Requisitions in kind and services shall not be demanded from municipalities or inhabitants except for the needs of the army of occupation. They shall be in proportion to the resources of the country, and of such nature as not to involve the inhabitants in the obligation of taking part in military operations against their own country.
>
> "Such requisitions and services shall only be demanded on the authority of the commander in the locality occupied.
>
> "Contributions in kind shall so far as possible be paid for in cash; if not, a receipt shall be given *and the payment of the amount due shall be made as soon as possible.*" (Part italicized is not in the Convention of 1899.)

Article LIII of the 1907 Convention is likewise, with slight exceptions, similar to the same numbered Article of the 1899 Convention. This Article in the 1907 Convention reads, as follows:

"An army of occupation can only take possession of cash, funds, and realizable securities which are strictly the property of the State, depots of arms, means of transport, stores and supplies, and, generally, all movable property belonging to the State which may be used for military operations.

"*All appliances, whether on land, at sea, or in the air, adapted for transmission of news, or for the transport of persons or things,* exclusive of cases governed by naval law, depots of arms, and, generally, all kinds of ammunitions of war, *may be seized, even if they belong to private individuals,* but must be restored and compensation fixed when peace is made."

(The words italicized in the Article above quoted indicate the essential differences between the wording of the corresponding paragraphs of the Convention of 1907 and the Convention of 1899.)

The Rules of Land Warfare, issued by order of the Secretary of War, on October 1, 1940 (FM 27-10, 1940), 84-85—in effect at the outbreak of war against Japan—"for the information and guidance of all concerned"—contain the following provisions covering "requisitions":

Article 335 embodies, word for word, Article LII of the Hague Convention of 1907, *supra.* (App. W, p. 58 b.)

Article 336 reads:

"What may be requisitioned.—Practically everything may be requisitioned under this article that is necessary for the maintenance of the army, such as fuel, food, forage, clothing, tobacco, printing presses, type, leather, cloth, etc. Billeting of troops for quarters and sustenance is also authorized."

The other pertinent Rules of Land Warfare are found in App. W, p. 58 b.

It is self-evident that these Rules gave every commanding officer in the field in the Philippines all of the leeway required for him to acquire *all* urgently needed supplies and material for the operation and maintenance of the troops under his command, without legislation. (See App. S, p. 31 b, as to transportation.)

It is common knowledge that our armed forces operating in the Philippines were operating not only many thousands of miles from home, but also with an inadequate store of supplies and material necessary for the use of our armed forces. This is particularly true after the surrender in 1942, when guerrilla operations became necessary and were carried on. Requisitions were required and indeed anticipated, and made. (App. S, p. 31 b.)

The Rules of Land Warfare, as above quoted and in Appendix W., gave our officers in the field full authority to acquire whatever supplies and material were required by the armed forces which the local area could afford. They also recognized the obligation on the part of the United States to make just compensation for any of such supplies and material that were procured for the necessary use of *our* armed forces and not paid for at the time of their requisition.

In fact, General MacArthur having recognized and assumed the responsibility of the United States Army therefor (App. AA, p. 77 b), thousands of such claims based upon such requisitions by guerrillas were settled and paid by the Army Claims Service established for that purpose in April 1945, and extended to guerrilla claims in August 1945, out of funds appropriated by Congress. (App. Y, Z and AA, pp. 61 b to 78 b.)

The First War Powers Act of 1941 (55 Stat. 838; 50 U.S.C.A., App. 611) conferred on the President the most extensive powers in connection with defense of the nation. (App. I, p. 5 b.)

The Military Requisition Act of October 16, 1941 (55 Stat. 742; 50 U.S.C.A., App. 721), in effect, merely clarifies the provisions with respect to obtaining supplies and material embodied in the Hague Conventions of 1899 and 1907 and in the Rules of Land Warfare, *supra*, and does not add anything to the power inherent in this Nation to carry on effective military activities in any theater of operations where it might be engaged (App. H, p. 2 b).

The constitutionality of this Act was sustained in *In re: Inland Waterways, Inc.* (1943) (49 F. Supp. 675). See also *Commodities Trading Company* v. *United States*, 113 Ct. of Cls. 244, reversed, 339 U.S. 121.

The right of the military commander to requisition supplies and material vitally needed for his operations is recognized by the authorities on International Law (App. CC, p. 81 b).

To what extent can it be said that the internationally recognized rules of general application are not applicable to the Philippines, in the subject case? Can it be said that the Autonomy Act of August 29, 1916, (39 Stat. 547; 48 U.S.C. 1003) (App. G, p. 1 b), by its terms prohibits the application of the general principles of International Law to the Philippines, or that the application of the First War Powers Act of 1941 nullifies the principles, in the face of the Military Requisition Act of 1941, which merely recognizes these

rules and puts them into operation, as respondent has contended in the United States Court of Claims?

The answer is simple: in no measure—to no extent. The Requisition Act of 1941 and the general principles of International Law are applicable to the requisitions by the guerrillas—our armed forces in the Philippines during World War II.

In the case of *Jacobs* v. *The United States,* 290 U.S. 13, 16, 17, involving payment for property taken over by the United States, Mr. Justice Hughes says that the right to

> ". . . just compensation for property taken by the United States for public use . . . was guaranteed by the Constitution. The fact . . . that the right was asserted in suits by the owners did not change the essential nature of the claim. The form of the remedy did not qualify the right. It rested upon the Fifth Amendment. Statutory recognition was not necessary. Such a promise was implied because of the duty to pay imposed by the Amendment. The suits were thus founded upon the Constitution of the United States . . .
>
> "The amount recoverable was just compensation, not inadequate compensation."

A similar conclusion was reached by Mr. Justice Frankfurter in the case of *United States* v. *Dickinson,* 331 U.S. 745.

The First War Powers Act of 1941, *supra,* conferring specific powers on the President, makes no reference to the Autonomy Act of August 29, 1916, except that sec. 301, Title III, of said First War Powers Act, amends sec. 5(b), as amended, of the Trading with the Enemy Act of 1917, to read in part as follows:

"3). As used in *this subdivision* the term 'United States' means the United States and any place subject to the jurisdiction thereof, including the *Philippine Islands,* and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands, and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising on the high seas . . . "

The directive of April 7, 1945, establishing the Army Claims Service in the Philippines (App. Z, p. 69 b), extended by General MacArthur August 6, 1945, to claims arising out of requisitions by organized guerrillas, (App. AA, p. 77 b), appears to be by authority of the First War Powers Act of 1941, which itself did not specifically mention the Philippines, except in connection with amending the Trading with the Enemy Act. Why is that Act more applicable to the Philippines and a source of authority for settling claims against the Army than is the Military Requisition Act of 1941?

The Congress, by an Act of July 16, 1918 (40 Stat. 903), provides pensions for widows and children of officers and enlisted men who served in the war with Spain, in the Philippine insurrection, or in the Boxer campaign. This was only two years after the Autonomy Act of 1916, of which the very next Congress was very cognizant. No mention, however, was made of Philippines claimants. It was, nonetheless, held to apply to the Philippine Islands in *People* v. *Tan,* 57 P.I. 71.

More recently, the National Life Insurance Act, 1940, as amended (54 Stat. 1008), which provides life

insurance for the members of the armed forces of the United States, although it likewise contains no reference to the Philippine Islands, has been held applicable to the Philippines. (40 Op. Atty. Gen. 185, App. BB, p. 78 b.)

In the opinion rendered April 27, 1942, the Attorney General, after an extended discussion of the status of the organized military forces of the Government of the Commonwealth of the Philippine Islands, held that the Act entitles the members of such Philippine forces to the benefits of the Insurance Act, saying in part:

> " . . . it seems clear that personnel of the organized military forces of the Commonwealth of the Philippines called and ordered into the Armed Forces of the United States, under the Military Order of the President, of July 26, 1941, are in the active service of the land and naval forces of the United States."

By precisely the same token, without specifically naming the Philippines, the Military Requisition Act of 1941, provides specific wartime legislation to insure, so far as possible, that *our armed forces,* in whatever distant theater of operations, including the Philippine Islands, in the defense of our Nation, would have the right, so far as the United States could grant such right, to procure by requisition, or by any other means necessary, the available supplies and material necessary for the maintenance of such forces. The obligation to make just compensation was of necessity incorporated therein along with the right to requisition.

The Appeal Board, Office of Contract Settlement, has itself held, in *Ignacio* v. *Navy,* 3 App. Bd. O.C.S.

No. 260, p. 151, *Haussermann* v. *Navy*, 2 App. Bd. O.C.S. 242, p. 186, and *Manila Trading & Supply Co.* v. *Navy*, 2 App. Bd. O.C.S. No. 181, pp. 172, 190, that the Contract Settlement Act of 1944 applies to the Philippines, notwithstanding the Autonomy Act of 1916, even though no mention of the Philippines is made therein.

The Board properly reasoned that the Act applied to *any person* who furnished supplies needed for the prosecution of the war, that Congress knew that such supplies would be furnished in the Philippines, and that nowhere in the Act does it appear that the Act would not apply to persons who furnished supplies for the war in the Philippines. There is no basis for reasoning differently in the subject case.

The Military Requisition Act of 1941 was strictly within the powers of Congress, as set out in the Constitution, and applied with full force and effect wherever the armed forces of the United States might be engaged.

Article I, sec. 8, of the Constitution gives the Congress the power, in the 11th clause, "to declare war"; in the 12th clause, "to raise and support armies"; in the 14th clause, "to make rules for the government and regulation of the *land and naval forces*"; while the Fifth Amendment to the Constitution expressly provides that "private property" shall not "be taken for public use without just compensation".

Accordingly, the provisions of the Autonomy Act do not apply to powers exercised under the Military Requisition Act of 1941, (as well as under the Hague Conventions and the Rules of Land Warfare).

There is no question that the supplies involved in this case were taken and used by the United States armed forces in the Philippines and have not been paid for to this date.

Petitioner, on the basis of the authorities hereinbefore cited, emphatically urges (1) that in the national emergency our armed forces had ample power, under the Hague Conventions, the Constitution of the United States, the decisions of Courts of the United States, and the Rules of Land Warfare for the guidance of our Army, to requisition in the Philippines anything available and required for the needs of our armed forces in their military operations in the Islands, and that when it did so there was an obligation of the United States to make just compensation therefor, and (2) that neither in the requisition nor in the establishment of an authority to determine the responsibility of the United States was there required to be any delegation of authority, either under the Military Requisition Act of 1941 or any other Act. *International Paper Company* v. *United States,* 68 Ct. of Cls. 411, rev. 282 U.S. 399; *Roxford Knitting Co.* v. *Moore & Tierney,* 265 F. 177, 179, cert. den. 253 U.S. 498.

The following is a significant statement by Mr. Justice Holmes, in *International Paper Co.* at p. 406:

> " . . . The Government exercised its power in the interest of the country in an important matter, without difficulty, so far as appears, until the time comes to pay for what it has had. The doubt is late."

In *Roxford Knitting Co.* v. *Moore & Tierney, supra,* the Circuit Court of Appeals for the Second Circuit says, at p. 179:

> "In time of war, or of impending public danger, and without statutory authorization, private property may be appropriated to the public use. In *Mitchell* v. *Harmony,* 13 How. 115 113, Chief Justice Taney states that there are, without doubt, occasions in which a military officer may impress private property into the public service, or take it for public use; the Government being bound in all such cases to make full compensation to the owner . . . "

What the Courts have said in those two cases is quite apt in the subject case.

The fact that the authority for the War Claims Service was considered by the War Department to be under the First War Powers Act of 1941, rather than under the Military Requisition Act of 1941, or under its general war powers, is of no significance, any more than is the authority under which the officers of USAFFE purported to act at the time of the requisition, when the act of requisition was permitted and justifiable without any specific grant of authority. The establishing of the War Claims Service was purely an administrative act to clarify the subject matter for the benefit of those administering the powers given them to hear and determine claims. The obligation recognized by the establishment of the Claims Service existed under the Hague Conventions, under decisions of our Courts, under the Rules of Land Warfare for the guidance of our Army, and under the Military Requisition Act of 1941, equally. The arguments of the Government, seeking to avoid payment, "come late",

as stated by the Supreme Court, in *International Paper Co., supra.*

The inevitable conclusions to be drawn from the foregoing are:

The recognized Philippine guerrillas were part of the United States armed forces in the Philippines. The United States armed forces in the Philippines had the right and power to requisition supplies and materials for their military needs and sustenance and to give receipts therefor agreeing that eventually the United States Army would pay. Requisitions of the total value of $119,765.75 were made of petitioner by guerrillas who were recognized as elements of USAFFE, receipts therefor were given, and it was agreed that the United States Army would pay, all of which created a debt of the United States therefor. Payment has not been made.

The United States is bound to pay for provisions actually supplied to the armed forces of the United States, the United States Army, the United States Navy, the Philippine Army—all part of USAFFE, and the organized guerrillas who were part of USAFFE, in good faith, by a supplier who expected that such supplies would be used in benefit of the United States, which they were, and that the United States would pay therefor.

CONCLUSION

Unless it is now to be held (1) that the United States, under all applicable laws and the Constitution, had the sovereign right and power to make the Filipinos fight for us as part of our armed forces in *our* war against Japan, and (2) that the Filipinos in-

ducted into our armed forces, who fought as organized guerrillas and were later recognized as elements of USAFFE during the period of guerrilla warfare, had the right and power, under International Law, all applicable International Conventions and laws of the United States, to requisition supplies and material for their military needs and sustenance during World War II, but (3) that there is no obligation of the United States to pay for the supplies and material so requisitioned to support our armed forces, then the order below must be reversed.

Respectfully submitted,

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